Submission for the Record:
Hearing on Internal Revenue Service Operations and the 2010 Tax Return Filing Season held on March 25, 2010

Committee Members:

I am the case that puts the lie to the Commissioner's testimony of March 25, 2010 before the House Ways and Means Committee. Recognizing the "critical role that the IRS plays in the nation's economy," Commissioner Shulman boasts that accuracy rates for customer tax law questions remain in the 90-plus percentile; that IRS employees will be allowed to consider a taxpayer's current and future income when negotiating offers in compromise; and that funding will be used to carry out a robust and targeted enforcement program, to improve tax compliance and enhance workforce development.

Before discussing the critical role the IRS has played in destroying the nation's commercial fishing industry, let me state that I am also the poster child for the failure of the Internal Revenue Service Restructuring and Reform Act of 1998. On the very same day that the head of the IRS was testifying before the Committee, I was summoned before a Revenue Officer to be told that my principle residence was going to be seized, that he did not need judicial approval to do so (IRC § 6334(e)), that all fishermen are self-employed (IRC § 3121(b)(20)), that he has never heard of the boat reporting law (IRC § 6050A), that an offer in compromise is not an option, and that IRC § 3403 doesn't apply to me. Obviously the IRS is still being allowed to pick and choose what laws they will enforce, and against whom. As a twenty year veteran of the agency, he proudly told me that I would be his first home seizure since 1998.

Fishing boat captains and crew were determined to be employees of the boat owner by the U.S. Supreme Court in 1970 (United States v. Webb, 397 U.S. 179). As a result of the Court's decision, the Internal Revenue Service assessed boat owners for the federal income and social security taxes they owed on their employees. Rather than pay the taxes they claimed would bankrupt them, boat owners successfully lobbied Congress for the passage of IRC § 3121(b)(20) of the Tax Code in 1976, which excepted from employment, for tax purposes only, services of fishing boat crewmen and captains whose terms of employment conformed to the guidelines enumerated in the new law. To ensure compliance with the guidelines, Congress required boat owners to report the distribution of shares for each voyage to the IRS, IRC § 6050A, aptly titled, reporting requirements of certain fishing boat operators.

My discussion with the IRS concerning the employment status of commercial fishermen began in 1988 when my former husband, a commercial fisherman, was fired from a job because he objected to a certain deduction to a trade association the boat owner was taking from the gross proceeds of the trip prior to apportioning shares to the crew. It took me nine years to get the agency to issue a technical advice memorandum which still failed to address all the applicable laws and regulations concerning the employment status of fishermen. However, my ex-husband was determined to be an employee for tax purposes for tax years 1994, 1995, and 1996 by the IRS. Those employment tax liabilities have led to the proposed seizure of my house. I was never

his employer.

As previously mentioned, I have been told that there is no “boat reporting law.” Congress insisted that "in order to permit the Internal Revenue Service to maintain a method of insuring that the crewmen to be treated as self-employed correctly report their income to the IRS, the amendment also requires boat operators to report the identity of the self-employed individuals serving as cewmen, the weight and type of the catch distributed to each crewmen, or, in cases of distributions of proceeds of the catch, the dollar amount distributed to each crewman. The operator is also to report the percentage of each crewman's share of the catch, as well as his own percentage." (General Explanation of the Tax Reform Act of 1976).

To enable the IRS to follow the money paid to the “self-employed" crew, and to ensure that those crew were truly “self-employed,” boat operators were required to file information returns, form 1099-F, stating the percentage of the operator's and each crewman's share of the catch, and the type and weight of the share or the dollar amount received. Compliance could be confirmed if the percentages added up. Simply put, in order to establish self-employment status of the workers, the percentages everyone received over the course of the year must add up to 100%. When deductions are taken from the proceeds of the trip prior to calculating shares, the percentages will not add up to 100% at the end of the year. Self-employment status cannot be confirmed - the workers are employees.

In the mid 1980's the money trail was abandoned and the 1099-F's disappeared, but IRC § 6050A and Treas. Reg. § 1.6050A-1 remain intact. Now the IRS, unencumbered by a paper trail, simply treat all fishermen as self-employed. The question is, why? And by whose authority? Certainly not Congress’s, because the laws have not been changed.

When the law was enacted in 1976, it was estimated that the revenue loss would be $13 million annually. Perhaps the IRS Commissioner could tell the taxpayers what the true cost of the agency’s failure to monitor tax compliance in the fishing industry is now. How much damage to the industry has been caused by what is nothing less than an unauthorized IRS subsidy - in the form of a reprise from the burden of employment taxes - which has undoubtedly kept marginal fishing boats in the fisheries because the IRS illegally subsidized their labor costs?

Not only are the crews being forced to pay the employer’s share of FICA tax, they are also being forced to subsidize the boat owner’s expenses in order to stay employed. The IRS claims it has no restrictions on the type or amount of deductions that can be claimed by the owner as a trip expense to be paid for by the crew. Hence, the boat owner’s dues to trade associations, some of whom finance and employ some of the nation’s Fisheries Management Council Members who determine who will and will not be allowed to fish, can be paid for by the crew who receive absolutely nothing, or lose their jobs, when the management councils dole out quotas for the right to fish the nation’s waters. As in my ex-husband’s case, anyone who complains about the deductions or the boat owner’s failure to comply with the law ends up fired and unemployable in the industry - and at the wrong end of the IRS enforcement actions.

The IRS' failure to enforce the law has led to an overinvestment in the fisheries and the so-called crisis of "over-fishing" that surprisingly can only be cured by handing over the rights to the fisheries to those who overinvested in the fisheries. Individual fishing quotas have become the elixir of choice for the Councils and their backers who stand to reap windfall profits from the privatization of the country's fishery resources. Quotas have historically been assigned to vessel owners, not the crew. Although the crew can be forced to pay the price of the quota as a trip expense, when the quota is transferred or sold by the vessel owner, the crew gain nothing. In 1994, six years after I broached the subject of expense deductions with the IRS, a review of the Surf Clam/Quahog quota plan released by the National Marine Fisheries Services raised questions of lease manipulations and possible tax law violations, and the negative impact the quota price deduction as an operating expense was having on the crew. Investigation of lease arrangements in regards to tax implications was at the time suggested. It is highly doubtful such an investigation has occurred.

Failure to record the percentage share of the catch due and paid to the captains and crew not only promotes worker misclassification, but prevents documentation of the true catch history and industry participation of the non-vessel owning fishermen who may seek to obtain quota shares in those fisheries where quota may be allocated to crew.

The Administration has pledged to eliminate incentives for employers to miscalssify their employees in order to evade employment taxes and other employment laws and to vigorously enforce the tax laws and increase compliance through examination and collection programs. It has been my experience that the IRS refuses to examine employees even in those cases, such as mine, where it has been shown that the employer misclassified an employee and failed to comply with reporting provisions. This Committee should demand an explanation from Mr. Shulman as to why the Internal Revenue Service is not using the tools handed it by Congress to end worker misclassification and to close the tax gap in the fishing industry, and why the employee, and not the employer, is being held liable for the payment of employment taxes, contrary to the law, and contrary to the treatment of other taxpayers.

Respectfully submitted,

Cheryl J. Latos
April 6, 2010